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9 AUREFLAM CORPORATION

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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 AUREFLAM CORPORATION, a
16 California corporation;

17 Plaintiff,

18 v.

19 TUYEN HUY NGUYEN,
20 individually and doing
business as PHO HOA HUNG and
PHO HOA HUNG II; TU TIEN
NGUYEN, individually and
doing business as PHO HOA
HUNG and PHO HOA HUNG II;
LONG CUU VU, individually and
doing business as PHO HOA
HUNG II and DOES 1 through
10, inclusive;

21 Defendants.

22 Case No. C 08 01910 BZ

23 PLAINTIFF'S UNILATERAL CASE
MANAGEMENT STATEMENT;
[PROPOSED] CASE MANAGEMENT ORDER

24 Plaintiff Aureflam Corporation ("Aureflam") submits this Case
25 Management Statement and Proposed Order and requests that the Court
26 adopt it as its Case Management Order in this case.

27 The parties were unable to file a joint statement because the
28 defendants have been served but have yet to file an answer or

1 otherwise make an appearance in this case.

2 **1. Jurisdiction and Service**

3 This court has subject matter jurisdiction pursuant to 28
 4 U.S.C. § 1331, as plaintiff's claims arise under the Lanham Act,
 5 including 15 U.S.C. §§ 1114 and 1125. Subject matter jurisdiction
 6 over plaintiff's state law claim is proper pursuant to 28 U.S.C. §
 7 1337. Aureflam believes that personal jurisdiction and venue are
 8 proper within this district.

9 All named parties have been served. Tu Tien Nguyen, Tuyen Guy
 10 Nguyen, and Long Cuu Vu were served by substituted service on April
 11 19, 2008.

12 **2. Facts**

13 Aureflam Corporation is a California corporation that owns,
 14 operates, and in certain cases franchises Vietnamese-style
 15 restaurants under the trade name "Pho Hoa."

16 Aureflam's "Pho Hoa" service mark has been used in interstate
 17 commerce in connection with the operation of Vietnamese-style
 18 restaurants since 1983. The "Pho Hoa" mark has been registered with
 19 the USPTO since 1996 as Registration No. 2,017,091 and is now
 20 incontestable pursuant to 15 U.S.C. §§ 1065 and 1115(b). The "Pho
 21 Hoa" mark is well known throughout both the United States and
 22 internationally.

23 The defendants own and/or operate Vietnamese-style restaurants
 24 in Oakland and Hayward under the names "Pho Hoa Hung I" and "Pho Hoa
 25 Hung II." Aureflam contends that the use of these similar names for
 26 sale of competing goods and services constitutes an infringement of
 27 its federally registered "Pho Hoa" service mark.

28 Prior to filing this lawsuit, Aureflam sent cease and desist

1 letters to the defendants but received no response.

2 After the lawsuit was filed and the defendants had been served,
3 plaintiff Aureflam's counsel received a call from Thinh T. Nguyen,
4 who claimed to speak on behalf of the "Pho Hoa Hung" restaurants and
5 promised to take steps to change the name of the "Pho Hoa Hung"
6 restaurants. However, no final settlement has yet been reached.

7 **3. Legal Issues**

8 Aureflam's complaint brings claims under the Lanham Act, 15
9 U.S.C. §§ 1114 and 1125, and for unfair competition under Cal. Bus.
10 & Prof. Code §§ 17200 and 17500.

11 Because defendants have not filed responsive pleadings, it is
12 unclear which legal issues, if any, they dispute.

13 **4. Motions**

14 There are no pending motions.

15 If the case is not settled, plaintiff anticipates possibly
16 filing a motion for a preliminary injunction enjoining the
17 defendants from using the "Pho Hoa Hung" name or any other trade
18 name including the words "Pho Hoa."

19 **5. Amendment of Pleadings**

20 Aureflam currently has no plans to amend its complaint but
21 reserves the right to do so. Defendants have yet to file any
22 pleadings.

23 **6. Evidence Preservation**

24 Aureflam has not discarded, destroyed, or erased any evidence
25 in this case.

26 Defendants' steps to preserve evidence are unknown.

27 **7. Disclosures**

28 No initial disclosures have been made pursuant to Fed. R. Civ.

1 P. 26, as the defendants have not yet entered their appearance.

2 **8. Discovery**

3 No discovery has been undertaken to date. Plaintiff
4 anticipates that discovery will include interrogatories, requests
5 for admission, depositions, and requests for production of
6 documents. The parties have not yet held a conference to plan for
7 discovery.

8 Plaintiff does not request modification to or change of the
9 standard discovery limitations set forth in Fed. R. Civ. P. 26.

10 **9. Class Actions**

11 This is not a class action suit.

12 **10. Related Cases**

13 There are no related cases currently pending.

14 **11. Relief**

15 Plaintiff seeks issuance of preliminary and permanent
16 injunctions, recovery of actual damages and/or disgorgement of the
17 defendants' profits, treble damages under the Lanham Act, and
18 recovery of costs and attorneys' fees. Since no discovery has been
19 propounded, Aureflam is presently unable to determine the quantum of
20 damages.

21 **12. Settlement and ADR**

22 The parties have engaged in preliminary settlement discussions.
23 The parties have not discussed ADR.

24 **13. Consent to Magistrate Judge**

25 Plaintiff consents to have a magistrate judge conduct all
26 further proceedings, including trial and entry of judgment. The
27 defendants' position on this issue is unknown.

28 **14. Other References**

1 Aureflam does not presently believe that this case is suitable
2 for reference to binding arbitration, a special master, or the
3 Judicial Panel on Multidistrict Litigation.

4 **15. Narrowing of Issues**

5 The parties have not discussed stipulations or any other method
6 for narrowing the issues in this case.

7 **16. Expedited Schedule**

8 Plaintiff believes that this case may be appropriate to be
9 handled on an expedited basis.

10 **17. Scheduling**

11 Aureflam proposes that the setting of a schedule be deferred
12 for approximately 120 days until it can be determined if the case
13 can be settled or, alternatively, resolved by default judgment. If
14 the defendants do appear, the court should then address

15 **18. Trial**

16 Aureflam has requested a jury trial. Trial is expected to take
17 2-3 days.

18 **19. Disclosures of Non-Party Interested Entities or Persons**

19 Plaintiff has filed a "Certification of Interested Parties" as
20 required by Local Rule 3-16. The contents of this certification are
21 as follows:

22 Aureflam Corporation (Plaintiff)

23 Tuyen Huy Nguyen (Defendant)

24 Tu Tien Nguyen (Defendant)

25 Long Cuu Vu (Defendant)

26 **20. Other Matters**

27 Aureflam is not currently aware of any other matters that may
28 facilitate the just, speedy, and inexpensive disposition of this

1 matter.

4 GORMAN & MILLER, P.C.

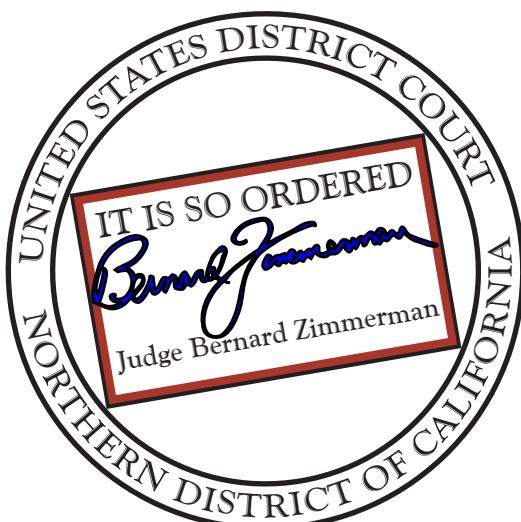
5 By: /s/
6 JOHN C. GORMAN
7 Attorneys for Plaintiff
8 Aureflam Corporation

11 CASE MANAGEMENT ORDER

12 The Case Management Conference is hereby continued to
13 October 27, 2008. at 4:00 p.m.

14 A new Conference Management Conference Statement shall be
15 filed by October 20, 2008. Plaintiff shall serve this Order on defendants.

18 Dated: July 11, 2008



21 
22 HON. BERNARD ZIMMERMAN
23 UNITED STATES MAGISTRATE JUDGE